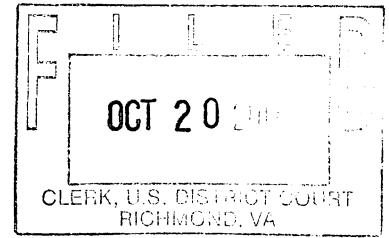


**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**



ANNE MARIE CHAMBERS,

Petitioner,

v.

D.K. WILLIAMS,

Respondent.

Civil Action No. 3:17CV640-HEH

MEMORANDUM OPINION

(Dismissing 28 U.S.C. § 2241 Petition for Want of Jurisdiction)

Anne Marie Chambers, a federal inmate proceeding *pro se*, submitted a 28 U.S.C. § 2241 Petition. (“§ 2241 Petition,” ECF No. 1.) For the reasons set forth below, the § 2241 Petition will be dismissed for want of jurisdiction.¹

I. Procedural History

Chambers was convicted of conspiracy to possess with intent to distribute crack cocaine, use of a firearm during a drug trafficking crime, and importing cocaine into the United States. *See United States v. Chambers*, Nos. 95–5362, 95–5364, 95–5363, 95–5496, 1996 WL 511484, at *1 (4th Cir. Sept. 10, 1996). The Court sentenced Chambers to 480 months of incarceration. *See United States v. Chambers*, No. 3:94CR89 (E.D. Va. May 1, 1995), ECF No. 91. The Fourth Circuit affirmed her convictions and sentence. *See Chambers*, 1996 WL 511484, at *1–4. Since that time, her sentence has been

¹ Chambers is incarcerated in Danbury Federal Correctional Institution, in Danbury, Connecticut. Accordingly, Chambers should have filed a § 2241 petition in the district where she is confined. *See* § 28 U.S.C. § 2241(a); *In re Vial*, 115 F.3d 1192, 1194 (4th Cir. 1997). However, the Court will not transfer the action to that court because of the apparent lack of jurisdiction under both § 2241 and 28 U.S.C. § 2255(e).

reduced twice, and she is now serving a 360-month term of imprisonment. *Chambers*, No. 3:94CR89 (E.D. Va. May 23, 2012 & Mar. 14, 2016), ECF Nos. 301, 327. By Memorandum Opinion and Order entered on September 3, 1998, the Court denied a 28 U.S.C. § 2255 motion filed by Chambers. *Chambers*, No. 3:94CR89 (E.D. Va. Sept. 3, 1998), ECF Nos. 180, 181. Chambers has also filed several successive, unauthorized § 2255 motions that have been dismissed by the Court. *Chambers*, No. 3:94CR89 (E.D. Va. May 1, 2002, Jan. 9, 2006, Nov. 28, 2016), ECF Nos. 203, 234, 336, 337. In her present § 2241 Petition, Chambers challenges her conviction for use of a firearm during a drug trafficking crime and resulting sentence.

II. Analysis

A motion pursuant to 28 U.S.C. § 2255 “provides the primary means of collateral attack” on the imposition of a federal conviction and sentence, and such motion must be filed with the sentencing court. *See Pack v. Yusuff*, 218 F.3d 448, 451 (5th Cir. 2000) (quoting *Cox v. Warden, Fed. Det. Ctr.*, 911 F.2d 1111, 1113 (5th Cir. 1990)). A federal inmate may not proceed under 28 U.S.C. § 2241 unless she demonstrates that the remedy afforded by 28 U.S.C. § 2255 “is inadequate or ineffective to test the legality of [her] detention.” 28 U.S.C. § 2255(e).² “For example, attacks on the execution of a sentence are properly raised in a § 2241 petition.” *In re Vial*, 115 F.3d 1192, 1194 n.5 (4th Cir. 1997) (citing *Bradshaw v. Story*, 86 F.3d 164, 166 (10th Cir. 1996); *Hanahan v. Luther*, 693 F.2d 629, 632 n.1 (7th Cir. 1982)). Nevertheless, the United States Court of Appeals

² “This ‘inadequate and ineffective’ exception is known as the ‘savings clause’ to [the] limitations imposed by § 2255.” *Wilson v. Wilson*, No. 1:11cv645 (TSE/TCB), 2012 WL 1245671, at *3 (E.D. Va. Apr. 12, 2012) (quoting *In re Jones*, 226 F.3d 328, 333 (4th Cir. 2000)).

for the Fourth Circuit has emphasized that “the remedy afforded by § 2255 is not rendered inadequate or ineffective merely because an individual has been unable to obtain relief under that provision or because an individual is procedurally barred from filing a § 2255 motion.” *Id.* (citations omitted).³

The Fourth Circuit has stressed that an inmate may proceed under § 2241 to challenge his conviction “in only very limited circumstances.” *United States v. Poole*, 531 F.3d 263, 269 (4th Cir. 2008) (citation omitted) (internal quotation marks omitted). The “controlling test,” *id.*, in the Fourth Circuit is as follows:

[Section] 2255 is inadequate and ineffective to test the legality of a conviction when: (1) at the time of conviction, settled law of this circuit or the Supreme Court established the legality of the conviction; (2) subsequent to the prisoner’s direct appeal and first § 2255 motion, the substantive law changed such that the conduct of which the prisoner *was convicted is deemed not to be criminal*; and (3) the prisoner cannot satisfy the gatekeeping provisions of § 2255 because the new rule is not one of constitutional law.

In re Jones, 226 F.3d 328, 333–34 (4th Cir. 2000) (emphasis added). The Fourth Circuit formulated this test to provide a remedy for the “fundamental defect presented by a situation in which *an individual is incarcerated for conduct that is not criminal* but, through no fault of his own, has no source of redress.” *Id.* at 333 n.3 (emphasis added).

Chambers fails to satisfy the second prong of *In re Jones*. *See id.* at 334.

Chambers fails to demonstrate that “subsequent to [her] direct appeal and [her] first

³ Chambers cannot avoid the bar on filing successive 28 U.S.C. § 2255 motions by suggesting she is filing a petition for a writ of habeas corpus under 28 U.S.C. § 2241. “Call it a motion for a new trial, arrest of judgment, mandamus, prohibition, coram nobis, coram vobis, audit querela . . . , the name makes no difference. It is substance that controls.” *Melton v. United States*, 359 F.3d 855, 857 (7th Cir. 2004) (citing *Thurman v. Gramley*, 97 F.3d 185, 186–87 (7th Cir. 1996)).

§ 2255 motion, the substantive law changed such that the conduct of which [she] *was convicted is deemed not to be criminal.*” *Id.* (emphasis added). The conduct of which Chambers stands convicted, use of a firearm during a drug trafficking crime, remains criminal. Chambers essentially argues that there was insufficient evidence to demonstrate that she used a firearm during the commission of a drug trafficking crime. She contends that “she did not consciously assist[] or use personally a firearm and did not have knowledge that a gun was being used by others,” and cites to *Bailey v. United States*, 516 U.S. 137 (1995),⁴ to demonstrate that the law has changed. (§ 2241 Pet. 3–4.) However, to the extent that Chambers argues that *Bailey* somehow entitles her to relief under § 2241, she is incorrect. *Bailey* was decided in 1995, during the pendency of her direct appeal. Thus, Chambers cannot satisfy the requirement that “subsequent to [her] direct appeal and [her] first § 2255 motion, the substantive law changed such that the conduct of which [she] was convicted is deemed not to be criminal.” *In re Jones*, 226 F.3d at 334.


Chambers also cites two Supreme Court cases that have been decided since the filing of her appeal and first § 2255 motion, *Dean v. United States*, 137 S. Ct. 1170 (2017), and *Rosemond v. United States*, 134 S. Ct. 1240 (2014), in support of her argument that she did not “use” a firearm. (§ 2241 Pet. 3.) However, neither case has any bearing on Chambers’s contention that she did not “use” a firearm during a drug trafficking crime. *Dean* involved the authority of sentencing courts to “consider[] a

⁴ *Bailey* held that a conviction under 18 U.S.C. § 924(c)(1), which criminalized the use of a firearm during and in relation to a drug trafficking crime, required evidence sufficient to show active employment of the firearm by the defendant, not just mere possession by a person who commits a drug offense. *See Bailey*, 516 U.S. at 150.

mandatory minimum [sentence] under § 924(c) when calculating an appropriate sentence for the predicate offense.” 137 S. Ct. at 1178.⁵ Chambers fails to explain how a case pertaining to the sentencing phase of criminal proceedings applies to whether she used a firearm. In addition, *Rosemond* involved what the “Government must show when it accuses a defendant of aiding and abetting” a § 924(c) offense, and the Supreme Court held that, “the Government makes its case by proving that the defendant actively participated in the underlying drug trafficking . . . with advance knowledge that a confederate would use or carry a gun during the crime’s commission.” 134 S. Ct. at 1243. Chambers was convicted as a principal of use of a firearm during a drug trafficking crime, not of aiding and abetting that crime. *See Chambers*, 1996 WL 511484, at *1 n.1. Thus, the Court fails to discern, and Chambers fails to explain, how *Rosemond* could provide her any relief in the context of § 2241. Because Chambers fails to demonstrate that § 2255 is inadequate and ineffective to test the legality of her conviction, she may not proceed under § 2241. Accordingly, the § 2241 Petition (ECF No. 1) will be dismissed for want of jurisdiction.

An appropriate Order shall issue.

Date: Oct 20, 2017
Richmond, Virginia


_____/s/
HENRY E. HUDSON
UNITED STATES DISTRICT JUDGE

⁵ To the extent Chambers intends to challenge her sixty month sentence for her § 924(c) conviction, she may not do so by § 2241. The “Fourth Circuit . . . has . . . not extended the reach of the savings clause to those petitioners challenging only their sentence.” *Poole*, 531 F.3d at 267 n.7 (citing *In re Jones*, 226 F.3d at 333–34).